

104TH CONGRESS
1ST SESSION

H. R. 1941

To amend title 38, United States Code, to make clarifying and technical amendments to further clarify the employment and reemployment rights and responsibilities of members of the uniformed services, as well as those of the employer community, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 1995

Mr. MONTGOMERY (for himself, Ms. WATERS, Mr. CLYBURN, Mr. MASCARA, and Mr. EVANS) introduced the following bill; which was referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make clarifying and technical amendments to further clarify the employment and reemployment rights and responsibilities of members of the uniformed services, as well as those of the employer community, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PURPOSES.**

4 Section 4301(a)(2) of title 38, United States Code,
5 is amended by striking “under honorable conditions”.

1 **SEC. 2. DEFINITIONS.**

2 Section 4303 of title 38, United States Code, is
3 amended—

4 (1) in paragraph (2), by striking “work per-
5 formed” and inserting “work not performed”; and

6 (2) in paragraph (16), by inserting “national”
7 before “emergency”.

8 **SEC. 3. DISCRIMINATION AGAINST PERSONS WHO SERVE IN**
9 **THE UNIFORMED SERVICES AND ACTS OF RE-**
10 **PRISAL PROHIBITED.**

11 Section 4311 of title 38, United States Code, is
12 amended by striking subsections (b) and (c) and inserting
13 the following:

14 “(b) An employer may not discriminate in employ-
15 ment against or take any adverse employment action
16 against any person because such person (1) has taken an
17 action to enforce a protection afforded any person under
18 this chapter, (2) has testified or otherwise made a state-
19 ment in or in connection with any proceeding under this
20 chapter, (3) has assisted or otherwise participated in an
21 investigation under this chapter, or (4) has exercised a
22 right provided for in this chapter. The prohibition in this
23 subsection shall apply with respect to a person regardless
24 of whether that person has performed service in the uni-
25 formed services.

1 “(c) An employer shall be considered to have engaged
2 in actions prohibited—

3 “(1) under subsection (a), if the person’s mem-
4 bership, application for membership, service, applica-
5 tion for service, or obligation for service in the uni-
6 formed services is a motivating factor in the employ-
7 er’s action, unless the employer can prove that the
8 action would have been taken in the absence of such
9 membership, application for membership, service,
10 application for service, or obligation for service; or

11 “(2) under subsection (b), if the person’s (A)
12 action to enforce a protection afforded any person
13 under this chapter, (B) testimony or making of a
14 statement in or in connection with any proceeding
15 under this chapter, (C) assistance or other participa-
16 tion in an investigation under this chapter, or (D)
17 exercise of a right provided for in this chapter, is a
18 motivating factor in the employer’s action, unless
19 the employer can prove that the action would have
20 been taken in the absence of such person’s enforce-
21 ment action, testimony, statement, assistance, par-
22 ticipation, or exercise of a right.

23 “(d) The prohibitions in subsections (a) and (b) shall
24 apply to any position of employment, including a position
25 that is described in section 4312(d)(1)(C).”.

1 **SEC. 4. REEMPLOYMENT RIGHTS OF PERSONS WHO SERVE**
2 **IN THE UNIFORMED SERVICES.**

3 (a) INCLUSION OF PREPARATION AND TRAVEL TIME
4 PRIOR TO SERVICE.—Section 4312(a) of title 38, United
5 States Code, is amended by striking “who is absent from
6 a position of employment” and inserting “whose absence
7 from a position of employment is necessitated”.

8 (b) LIMITATION ON SERVICE EXEMPTION TO WAR OR
9 NATIONAL EMERGENCY.—Section 4312(c)(4)(B) of such
10 title is amended to read as follows:

11 “(B) ordered to or retained on active duty
12 (other than for training) under any provision of
13 law because of a war or because of a national
14 emergency declared by the President or the
15 Congress as determined by the Secretary con-
16 cerned;”.

17 (c) BRIEF, NONRECURRENT PERIODS OF SERVICE.—
18 Section 4312(d)(2)(C) of such title is amended by striking
19 “is brief or for a nonrecurrent period and without a rea-
20 sonable expectation” and inserting “is for a brief,
21 nonrecurrent period and there is no reasonable expecta-
22 tion”.

23 (d) CONFORMING AMENDMENTS TO REDES-
24 IGNATIONS IN TITLE 10.—Section 4312(c) of such title
25 is amended—

1 (1) in paragraph (3), by striking “section 270”
2 and inserting “section 10147”; and

3 (2) in paragraph (4)—

4 (A) by striking “section 672(a), 672(g),
5 673, 673b, 673c, or 688” in subparagraph (A)
6 and inserting “section 688, 12301(a),
7 12301(g), 12302, 12304, or 12305”;

8 (B) by striking “section 673b” in subpara-
9 graph (C) and inserting “section 12304”; and

10 (C) by striking “section 3500 or 8500” in
11 subparagraph (E) and inserting “section
12 12406”.

13 **SEC. 5. REEMPLOYMENT POSITIONS.**

14 Section 4313(a)(4) of title 38, United States Code,
15 is amended—

16 (1) by striking “uniform services” in clause
17 (A)(ii) and inserting “uniformed services”; and

18 (2) by striking “of lesser status and pay which”
19 and inserting “which is the nearest approximation to
20 a position referred to first in clause (A)(i) and then
21 in clause (A)(ii) which”.

22 **SEC. 6. HEALTH PLANS.**

23 Section 4317(a) of title 38, United States Code, is
24 amended—

1 (1) by striking “(a)(1)(A) Subject to para-
 2 graphs (2) and (3), in” and inserting “(a)(1) In”;

3 (2) by redesignating clauses (i) and (ii) of para-
 4 graph (1) (as amended by paragraph (1) of this sec-
 5 tion) as subparagraphs (A) and (B), respectively;

6 (3) by redesignating subparagraph (B) as para-
 7 graph (2); and

8 (4) by redesignating subparagraph (C) as para-
 9 graph (3), and in that paragraph by redesignating
 10 clauses (i) and (ii) as subparagraphs (A) and (B),
 11 and by redesignating subclauses (I) and (II) as
 12 clauses (i) and (ii), respectively.

13 **SEC. 7. EMPLOYEE PENSION BENEFIT PLANS.**

14 The last sentence of section 4318(b)(2) of title 38,
 15 United States Code, is amended by striking “services,”
 16 and inserting “services, such payment period”.

17 **SEC. 8. ENFORCEMENT OF EMPLOYMENT OR REEMPLOY-**
 18 **MENT RIGHTS.**

19 (a) TECHNICAL AMENDMENT.—The second sentence
 20 of section 4322(d) of title 38, United States Code, is
 21 amended by inserting “attempt to” before “resolve”.

22 (b) NOTIFICATION.—Section 4322(e) of such title is
 23 amended—

24 (1) in the matter preceding paragraph (1), by
 25 striking “with respect to a complaint under sub-

1 section (d) are unsuccessful,” and inserting “with
2 respect to any complaint filed under subsection (a)
3 do not resolve the complaint,”; and

4 (2) in paragraph (2), by inserting “or the Of-
5 fice of Personnel Management” after “Federal exec-
6 utive agency”.

7 **SEC. 9. ENFORCEMENT OF RIGHTS WITH RESPECT TO A**
8 **STATE OR PRIVATE EMPLOYER.**

9 Section 4323(a) of title 38, United States Code, is
10 amended—

11 (1) in paragraph (1), by striking “of an unsuc-
12 cessful effort to resolve a complaint”; and

13 (2) in paragraph (2)(A), by striking “regarding
14 the complaint under section 4322(c)” and inserting
15 “under section 4322(a)”.

16 **SEC. 10. ENFORCEMENT OF RIGHTS WITH RESPECT TO**
17 **FEDERAL EXECUTIVE AGENCIES.**

18 (a) REFERRAL.—Section 4324(a)(1) of title 38, Unit-
19 ed States Code, is amended by striking “of an unsucces-
20 sful effort to resolve a complaint relating to a Federal exec-
21 utive agency”.

22 (b) ALTERNATIVE SUBMISSION OF COMPLAINT.—
23 Section 4324(b) of such title is amended—

1 (1) in the matter preceding paragraph (1), by
 2 inserting “or the Office of Personnel Management”
 3 after “Federal executive agency”; and

4 (2) in paragraph (1), by striking “regarding a
 5 complaint under section 4322(c)” and inserting
 6 “under section 4322(a)”.

7 (c) RELIEF.—Section 4324(c)(2) of such title is
 8 amended—

9 (1) by inserting “or the Office of Personnel
 10 Management” after “Federal executive agency”; and

11 (2) by striking “employee” and inserting “Of-
 12 fice”.

13 **SEC. 11. ENFORCEMENT OF RIGHTS WITH RESPECT TO**
 14 **CERTAIN FEDERAL AGENCIES.**

15 Section 4325(d)(1) of title 38, United States Code,
 16 is amended—

17 (1) by striking “, alternative employment in the
 18 Federal Government under this chapter,”; and

19 (2) by striking “employee” the last place it ap-
 20 pears and inserting “employees”.

21 **SEC. 12. CONDUCT OF INVESTIGATION; SUBPOENAS.**

22 Section 4326(a) of title 38, United States Code, is
 23 amended by inserting “have reasonable access to and the
 24 right to interview persons with information relevant to the
 25 investigation and shall” after “at all reasonable times,”.

1 **SEC. 13. TRANSITION RULES AND EFFECTIVE DATES.**

2 (a) REEMPLOYMENT.—Section 8(a) of the Uniformed
3 Services Employment and Reemployment Rights Act of
4 1994 (38 U.S.C. 4301 note) is amended—

5 (1) in paragraph (3), by adding at the end
6 thereof the following: “Any service begun up to 60
7 days after the date of enactment of this Act, which
8 is served up to 60 days after the date of enactment
9 of this Act pursuant to orders issued under section
10 502(f) of chapter 5 of title 32, United States Code,
11 shall be considered under chapter 43 of title 38,
12 United States Code, as in effect on the day before
13 such date of enactment. Any service pursuant to or-
14 ders issued under section 502(f) of chapter 5 of title
15 32, United States Code, served after 60 days after
16 the date of enactment of this Act, regardless of
17 when begun, shall be considered under the amend-
18 ments made by this Act.”; and

19 (2) in paragraph (4), by striking “such period”
20 and inserting “such 60-day period”.

21 (b) INSURANCE.—Section 8(c)(2) of such Act is
22 amended by striking “person on active duty” and inserting
23 “person serving a period of service in the uniformed serv-
24 ices”.

1 **SEC. 14. EFFECTIVE DATES.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), the amendments made by this Act shall take effect
4 as of October 13, 1994.

5 (b) REORGANIZED TITLE 10 REFERENCES.—The
6 amendments made by section 4(d) shall take effect as of
7 December 1, 1994.

